

### **REMARKS**

Claims 1-36, 39-40, and 65-89 are pending. Independent claims 1, 26 and 39 have been amended to recite a further distinguishing characteristic to expedite prosecution. Claim 69 has been amended to correct a typographical error. Claims 26 and 39 have been further amended in a broadening fashion. A Request for Continued Examination (RCE) is submitted herewith. Reconsideration of the present application is respectfully requested.

#### ***Claim Rejections Under 35 U.S.C. § 112***

Claims 4-7 and 69-72 stand rejected under 35 U.S.C. § 112, second paragraph, as allegedly indefinite. The Office alleges that in claim 4 it is unclear whether the "unique ID" in line 4 refers to the "unique ID" in line 3, and similarly for claim 69. The rejection is traversed since the claims are abundantly clear on their faces. There are two unique IDs recited in each of claims 4 and 69: 1) a unique ID associated with a sender of said instructions, and 2) a unique ID associated with Push transmissions. Accordingly, Applicant respectfully requests reconsideration and withdrawal of this rejection. Nevertheless, to expedite prosecution, Applicant is willing to entertain an examiner's amendment to claims 4 and 69 to recite "another unique ID associated with Push transmissions" if the examiner insists on otherwise maintaining this rejection.

#### ***Claim Rejections Under 35 U.S.C. § 103***

Claims 1, 8, 13-14, 18, 201-23, 25, 66, 73, 78-79, 83 and 86-87 stand rejected under 35 U.S.C. § 103(a) over Pyhalammi et al. (U.S. Publication No. 2006/0073810) in view of Corts (U.S. Publication No. 2002/0095228). Independent claims 1, 26 and 39 have been amended, and Applicant respectfully submits that amended claims 1, 8, 13-16, 20-23 are patentable over the applied references.

Independent claim 1 has been amended, and it is respectfully submitted that even if the Office's hypothetical combination were made, for the sake of argument, the result would not yield the combination of features recited in claim 1. Claim 1 recites a gateway for scheduling over the air transmissions of data content. The gateway comprises a network inbound queue for the reception of instructions related to data content; a scheduler for processing said instructions to determine broadcast times and schedule for said data content to be received by a digital radio broadcast receiver of a user, *wherein the scheduler determines said broadcast times and schedule without user-selected input regarding*

*transmission priority or delivery instructions.* The gateway also comprises a data processor for encoding said data content for digital radio broadcast transmission; an addressing module for processing said instructions for extracting addressing information; and an outbound queue for storing said encoded data content. Support for the amendment to claim 1, and likewise for claims 26 and 39, may be found at least at paragraphs 0049-0050, 0073-0077 and 185 of the published application. Of course, the claims are not limited to the examples discussed in those sections.

As recited in claim 1, *the scheduler determines said broadcast times and schedule without user-selected input regarding transmission priority information or delivery instructions.* For example, as noted at paragraph 0049-0050 of the published application, a scheduler can receive instructions from a content provider (i.e., instructions that originate with the content provider, not with the user of a digital broadcast receiver), and the scheduler then processes the instructions to determine transmission time for data content in accordance with the instructions, provided no conflicts are implicated. The user of the digital broadcast receiver has no role in impacting the time of transmissions, and the user does not select particular data content for transmission to the receiver. In addition, as noted at paragraph 0073, should the gateway (referred to as iPPG in this example) determine that there is a conflict in the timing of sending messages, the gateway decides the order of such messages based upon transmission priority sub-classifications from the control part of the ASP (application service provider) header – i.e., priority sub-classifications provided by a content provider, not by a user of a digital radio broadcast receiver. As noted at paragraph 0073, the messages in Table 2 (FIG. 9), including priority indicators, need to be selected by the ASPs. Thus, the user of the digital broadcast receiver plays no role in impacting the order of transmitted messages. Further, as noted at paragraphs 0184 and 0185, which refer to FIGS. 15a and 15b regarding the operation of an exemplary gateway (referred to as iPPG in that example), the message from the content provider to the gateway includes, among other things, delivery instructions that include a priority indicator as well as other information. The user of a digital radio broadcast receiver does not select or provide such delivery instructions.

In contrast, Pyhalammi discloses a method for delivering mobile content over a cellular wireless network wherein a user of a cellular phone requests content (i.e., user selected content that is then transmitted after being selected by the user) and wherein *the class of delivery of message content is selected by the user*, whether on a transaction basis

or a subscription basis pre-defined in a user profile. (e.g., Abstract.) This is a central facet of Pyhalammi's alleged invention. As noted at paragraph 0007 of Pyhalammi, the content/service provider then relays the user's request including class of delivery to other systems. In any event, the class or delivery is selected by the user of the cellular phone. It is noted that Pyhalammi discloses at paragraph 0017 therein automatic selection of delivery class, and this is described further at paragraph 0025 therein, wherein the *user can select* between user-selected and auto-selected classes of delivery for the user-selected content (page 3, bottom of column 1), and wherein auto-selected delivery provides a predetermined delivery class according to a user agreement or is linked to the content type. Regardless, the disclosure at paragraphs 0017 and 0025 are understood to mean that user input is still required regarding class of delivery. Thus, even if the Office's hypothetical combination were made, the result would not yield the combination of features claimed. Withdrawal of the rejection and allowance of claim 1 is requested for at least this reason.

Moreover, it is believed that the rejection does not make out a *prima facie* case of obviousness. First, it is believed that one of ordinary skill in the art would not have found it obvious to modify the Pyhalammi system to use in-band on-channel (IBOC) digital radio broadcasting system as disclosed in Corts. The infrastructures for cellular and IBOC systems are vastly different. They use different transmission frequencies, and whereas in cellular a user and a transmitter engage in two-communication over the frequencies allotted, in IBOC, a receiver does not send transmissions back to a transmitter over frequency range for which the receiver receives transmissions. Moreover, the rejection is devoid of necessary details and is not fully understood. Is the Office also suggesting that it would have been obvious to modify the broadcast infrastructure of Pyhalammi to include IBOC transmission as in Corts? Is the Office suggesting that it would have been obvious to make a hybrid combination cellular phone/IBOC radio receiver at the time of Pyhalammi's alleged invention? Even if that were hypothetically done (Applicant does not concede there would have been an appropriate reason to do so or an expectation of success), it would at most provide a cellular phone as in Pyhalammi combined with an IBOC receiver, but would not provide for the scheduling of data content for *digital radio broadcast transmission* as claimed. Any such scheduling would still relate only to Pyhalammi's *cellular* transmission. What is apparent from the Office's rejection in this regard is that it is substantially devoid of sufficient details as to what is being hypothetically modified and why.

Thus, for at least the above-noted reasons, withdrawal of the rejection and allowance of claim 1 is respectfully requested. Claims 8, 13-14, 18, 21-23, 25, 66, 73, 78-79, 83, 86-87 and 89 are allowable at least by virtue of their dependence from claim 1.

Claims 5, 15-16, 20, 26, 39, 65, 80-81 and 85 stand rejected under 35 U.S.C. § 103(a) over Pyhalammi in view of Corts and further in view of Garrity (U.S. Patent No. 6,745,237). Independent claims 26 and 39 have been amended in a manner similar to that for claim 1, and Applicant submits that the claims 26 and 39 are patentable over the Office's combination of applied references.

In rejecting independent claims 26 and 39, the Office invokes the rejection as applied to claim 1, and relies upon Garrity for the alleged disclosure of an authenticator. As such, even if the Office's hypothetical combination were made, the Office's reliance upon Garrity would not make up for deficiencies of Pyhalammi and Corts as described above with regard to claim 1. Thus, withdrawal of the rejection and allowance of independent claims 26 and 39 is requested for at least these reasons. Claims 5, 15-16, 20, 65, 80-81 and 85 are allowable at least by virtue of dependency.

The Office Action includes further rejections of various dependent claims in view of other combinations of applied references and in view of Official Notice:

claims 2, 3, and 67-68 were rejected under 35 U.S.C. § 103(a) over Pyhalammi in view of Corts and further in view of Miller (U.S. Publication No. 2003/0055977);

claims 4 and 69 were rejected under 35 U.S.C. § 103(a) over Pyhalammi in view of Corts and further in view of Hirayama (U.S. Publication No. 2006/0069718);

claims 9 and 74 were rejected under 35 U.S.C. § 103(a) over Pyhalammi in view of Corts and further in view of Kadyk et al. (U.S. Patent No. 7,046,691);

claims 10, 17, 24, 75, 82 and 88 were rejected under 35 U.S.C. § 103(a) over Pyhalammi in view of Corts and further in view of Official Notice;

claims 11 and 76 were rejected under 35 U.S.C. § 103(a) over Pyhalammi in view of Corts and further in view of Marlow (U.S. Publication No. 2003/0046670);

claims 12 and 77 were rejected under 35 U.S.C. § 103(a) over Pyhalammi in view of Corts and further in view of Ellis et al. (U.S. Publication No. 2004/0194131);

claims 19 and 84 were rejected under 35 U.S.C. § 103(a) over Pyhalammi in view of Corts and further in view of Thompson et al. (U.S. Patent No. 6,907,247);

claims 6-7 and 71-72 were rejected under 35 U.S.C. § 103(a) over Pyhalammi in view of Corts and Hirayama and further in view of Lin et al. (U.S. Publication No. 2002/0146016);

claim 70 was rejected under 35 U.S.C. § 103(a) over Pyhalammi in view of Corts and Hirayama and further in view of Garrity.

Applicant respectfully submits that rejections of these claims are either moot or overcome by the amendments to claims 1, 26 and 39, from which various ones of these claims depend. The Office's reliance upon these secondary references does not make up for the deficiencies of Pyhalammi and Corts discussed above with respect to claim 1.

Claims 27-36 and 40 were rejected apparently for reasons similar to claims 2, 3, 10, 12-15, 18, 23 and 25 (Office Action at paragraph 65, p. 17). The Office is respectfully requested to confirm that Applicant's understanding is correct, or otherwise clarify the rejection.

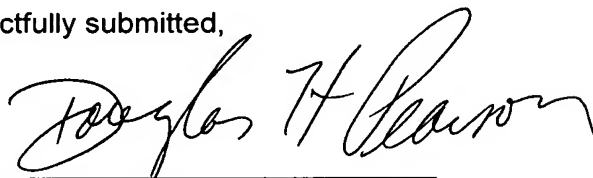
Additionally, Applicants traverse the taking of official notice with regard to claims 10, 17, 24, 75, 82 and 88 (See, paragraph 44 of the Office Action). Considering that the Office's rejection appears to allege combining Pyhalammi's mobile cellular system and the IBOC system of Corts, which possess vastly different infrastructures, it is respectfully requested that the Examiner provide prior art evidencing the features for which Official Notice is taken so that such art can be evaluated in the context of the Office's hypothetical hybrid system.

**Conclusion**

Therefore, all objections and rejections having been addressed, it is respectfully submitted that the present application is in a condition for allowance and a Notice to that effect is earnestly solicited.

Should any issues remain unresolved, the Examiner is encouraged to contact the undersigned attorney for Applicants at the telephone number indicated below in order to expeditiously resolve any remaining issues.

Respectfully submitted,

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